

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4251 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KIMJIBHAI RAJABHAI DHARIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MS KN VALIKARIMWALA, AGP for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 17/07/97

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the detention order dated 3/5/1997 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

As per order passed today in Civil Application No. 6301 of 1997, this matter is taken up for final hearing today.

2. The grounds on which the impugned order of detention has been passed appear at Annexure-B. They inter-alia indicate that the petitioner has been carrying on criminal and anti-social activities of assaulting and causing hurt to innocent persons and committing offences under Chapters XVI and XVII of the Indian Penal Code, thereby creating atmosphere of fear. Two offences of 1997 inter-alia under sections 393, 323, 324, 332, 504 and 506(2) of the Indian Penal Code read with sec. 135 of the Bombay Police Act have been registered respectively in 'A' Division and 'C' Division Police Stations, Bhavnagar.

3. It has been recited that the petitioner's anti-social activities tend to obstruct the maintenance of public order and in support of the said conclusion statements of 4 witnesses have been relied upon. It has also been recited that the petitioner's activities are likely to adversely affect public health.

4. The statements of the witnesses speak about three incidents dated 7/3/1997, 14/4/1997 and 16/4/1997 and all of them indicate the petitioner with the aid of his associates beating the concerned witnesses in public and the petitioner's conduct resulting in fear amongst the people collected there.

5. It is on the basis of the aforesaid cases and the incidents that the detaining authority has passed the impugned order of detention branding the petitioner as 'dangerous person' under sec. 2(c) of the PASA Act.

6. I have heard the learned advocate for the petitioner and the Ld. A.G.P. for the State. The petitioner has challenged the impugned order of detention on number of grounds inter-alia on the ground that the genuineness of the claim of privilege made by the Detaining Authority u/s. 9(2) of the PASA Act vis-a-vis the statements of the witnesses is under doubt. According to his submission, in fact the witnesses in their statements have said that their addresses, names, place of business, etc. should not be disclosed to the detenu as they were apprehending danger to their lives and the property. Such apprehension or fear expressed by the witnesses in their statements was before the Authority who recorded the same. The Detaining Authority has not recorded the statements. The Detaining Authority itself was required to be subjectively satisfied with the

claim of privilege which it was seeking to make was justified. Unfortunately, below every statement the concerned authority has written one word, namely, "verified" and based on such endorsement made by the authority concerned, the Detaining Authority has claimed privilege.

7. In support of the aforesaid submission to the effect that there is no satisfaction on the part of the concerned Authority as also the Detaining Authority about the genuineness regarding the claim of privilege made by the Detaining Authority u/S. 9(2) of the PASA Act, reference has been made to a decision of this Court in Jakirbhai Rahimbhai Nagori V/s. District Magistrate, Mehsana and ors. reported in 1996 (1) G.L.H. 300, which in turn has made reference to a decision of the Division Bench of this Court in the case of Koli Ashwin v/s. State of Gujarat in Special Criminal Application No. 1812 of 1993 dated 12/9/1994. The observations of the Division Bench have been reproduced in Jakirbhai's case (supra) and they also might be referred to here :-

"However, as is well established, for exercising the power under section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose, he must be able to point out either in the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use of for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P., who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material.

About what has been verified, what were the instructions and to what extent the verifying authority himself was satisfied about the apprehension expressed, there is nothing either in the grounds of detention along with its compilation or in the contemporaneous record from the office of the detaining authority."

8. Having heard the learned A.G.P. for the State, I am of the opinion that the aforesaid decision clinches

the issue in favour of the petitioner. The result is that it shall have to be found that the continued detention of the detenu is, therefore, required to be snapped by declaring it illegal.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed on the strength of Jakirbhai Rahimbhai Nagori's case, it is not necessary to deal with other grounds. Hence, following order is passed :-

The continued detention of the petitioner under impugned order is hereby quashed and set aside. The petitioner-detenu Harijan Khimaji Rajabhai Dharaiya shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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